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ABSTRACT

Texas Governor Mark White established a 28-member Governor's Task Force on Immigration on March 24, 1983 to: (1) examine the impact on Texas and its citizens of the legislative issues in the proposed federal Immigration Reform and Control Act of 1983; (2) hold public hearings to gain input from citizens, business, industry, labor, ranching and farming; (3) develop a Texas position on the legislation; and (4) develop strategies for affecting the national legislation. In this final report of the task force, separate sections address each major component of the proposed legislation: employer sanctions, enforcement, legal immigration, temporary workers, legalization (amnesty), federal reimbursement, and asylum. Other sections offer suggestions regarding the United States-Mexico relationship and aspects of documentation not directly addressed in the bill. Each section includes a discussion of the issues, particularly as they affect Texas, a summary of testimony on the issue before the task force, and specific recommendations (with rationale for each) pertaining to the issue. The executive order establishing the task force is appended. (NEC)

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May 14, 1984

The Honorable Mark White
Governor of Texas
State Capitol
Austin, Texas 78701

Dear Governor White:

On behalf of the members of the Task Force on Immigration, I am pleased to present you with this Final Report containing our recommendations.

Pursuant to Executive Order MW-3, the Task Force members participated in a number of meetings, held seven public hearings throughout Texas, and visited Border Patrol detention facilities. The recommendations contained in this report are a product of this effort.

We are grateful for having the opportunity and privilege to serve on this Task Force and to make recommendations on the critical issues of immigration policy reform.

We hereby respectfully submit our Final Report.

Sincerely yours,

Charles C. Foster

Charles C. Foster
Chairman
Task Force on Immigration

/cd

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FOREWORD

The proposed Immigration Reform and Control Act, which has been considered by the 98th and 99th U.S. Congresses, has stirred considerable debate. Within the debate a wide divergence of interests and opinions is evident. Often groups with opposite opinions on many other issues find themselves in agreement on certain proposed policy changes.

The seven public hearings that were held throughout the state allowed the Immigration Task Force to hear first-hand the views of diverse groups and individuals concerning the provisions within the proposed federal immigration reform legislation. The specific bills of interest to the Task Force are being sponsored by Senator Alan K. Simpson (R-Wyoming) and Representative Romano L. Mazzoli (D-Kentucky). A revised version of the "Simpson-Mazzoli" immigration reform legislation was offered by Representative Edward Roybal (D-California) in February 1984.

Pursuant to Governor White's mandate to the Task Force, the members have monitored closely the progress of the above legislation, discussed the testimony collected, and utilized the expertise of the members in order to formulate recommendations to the Governor regarding a Texas position on the proposed federal legislation. An Initial Report was published in June of 1983. The work of the Task Force continued actively until December 1983 and three new sections on Asylum, Documentation, and Reimbursement have been added. What follows are the final recommendations of the Task Force.

We wish to express our sincere thanks and appreciation to the city and county officials and their staffs in the cities of Houston, Lubbock, Tyler, El Paso, Brownsville, Dallas, and San Antonio, who kindly extended

themselves and made our public hearings possible, and to the Governor's staff for assisting in the coordination of a major undertaking within a relatively short period of time. Lastly, and most importantly, we would like to thank the numerous individuals who took time from their jobs and other duties and came before us to share their views on the proposed immigration reform proposals. Our work would not have been possible without the comments and suggestions of these concerned individuals.

INTRODUCTION

On March 24, 1983, Governor Mark White signed Executive Order MW-3 which established the Governor's Task Force on Immigration. This action was prompted by the introduction of the proposed federal Immigration Reform and Control Act in February of 1983 and recognition of the potential impact of several of its provisions on Texas and its residents.

In selecting the members to the Task Force, the Governor sought and achieved not only a broad regional distribution but a broad representation in experience and occupations. The 28-member task force includes representatives from South, Central, East, West, and North Central Texas, as well as the Panhandle; and reflects the experience and insight of labor, agriculture, immigration attorneys, public officials, social services, law enforcement, business, and education. Governor White charged the Task Force with the following responsibilities:

(a) To examine the impact on Texas and its citizens of the legislative issues, including employer sanctions, amnesty for certain aliens, a seasonal workers' program, and border enforcement;

(b) To hold public hearings in at least four geographic regions of the state in order to insure the greatest input from citizens, business, industry, labor, ranching and farming;

(c) To develop a Texas position on the legislation for presentation to the Governor; and

(d) To develop strategies for affecting the national legislation.

Pursuant to the directive expressed in Executive Order MW-3, the Task Force held public hearings in various geographic regions of the state. Hearings were held in seven locations: Houston, Lubbock, Tyler, El Paso, Brownsville, Dallas, and San Antonio. Input was sought from the widest possible range of interested Texans. Appearing at the hearings were both native-born and naturalized citizens, including skilled and semi-skilled workers; blue-collar and white-collar workers; farmers and ranchers; fishermen and shrimpers; small business owners; industrial employers in the manufacturing, commercial, and retail sectors; union members; and construction contractors. Representatives of numerous academic institutions and volunteer organizations who work with undocumented workers and refugees also appeared at the hearings to give testimony. At the Dallas public hearing, approximately 50 undocumented individuals attended the hearing to ask questions and to express their own concerns and fears.

The Foundation for Federal Immigration Reform: The 96th and 97th U.S. Congresses

The current immigration reform proposals under consideration by the U.S. Congress follow many years of deliberation and debate. In 1978, Congress established a bi-partisan Select Commission on Immigration and Refugee Policy. On March 1, 1981, after two years of hearings and discussion, the Select Commission issued its final report entitled U.S. Immigration Policy and the National Interest. Drawing upon the Commission's recommendations and other proposals, the Reagan Administration developed a proposal which was announced at a joint hearing of the House and Senate Judiciary Immigration Subcommittees on July 30, 1981. The proposal was subsequently introduced as H.R. 4832 and S. 1765 in October of 1981.

Extensive hearings were conducted by the House and Senate Judiciary Immigration Subcommittees on various aspects of immigration law and policy during October and November of 1981. The hearings culminated in the introduction of identical companion bills (H.R. 5872 and S. 2222) entitled the "Immigration Reform and Control Act of 1982" on March 17, 1982, by the chairmen of the House and Senate Judiciary Immigration Subcommittees, Congressman Romano L. Mazzoli and Senator Alan Simpson. The purpose of the bill as described by Congressman Mazzoli was "to reform outmoded and unworkable provisions of the present immigration law and gain control of our national borders". On April 1 and 20, 1982, the House and Senate Judiciary Immigration Subcommittees conducted joint hearings on the bills.

S. 2222 was considered on the floor of the Senate on August 12, 13, and 17, 1982. Various amendments were accepted, and on August 17, 1982, the bill was passed by a vote of 80 to 19.

Meanwhile, the House Committee on the Judiciary considered a revised bill--H.R. 5872--and favorably reported it on September 22, 1982, by a voice vote.

Prior to House Floor action the bill was referred to four other Committees: Agriculture, Education and Labor, Energy and Commerce, and Ways and Means. Only the Education and Labor Committee took any action on the bill, issuing a report with some recommended changes. On December 16, 17, and 18, 1982, the House considered H.R. 7357. During the debate, strong opposition to the bill was expressed in the form of over 300 amendments being offered. The 97th Congress ended before the House completed its consideration of the bill, and both bills died with the end of the session in December.

Recent Actions on Federal Immigration Reform: The 98th U.S. Congress

On January 26, 1983, Representative Mazzoli and Senator Simpson reintroduced their legislation as H.R. 1510 and S. 529. The bills were essentially the same as the versions passed by the House Judiciary Committee and the full Senate in the previous session.

S. 529 was considered on the Senate floor for four days in May, during which time several amendments to the bill were approved. Then, on May 18, 1983, the full Senate passed S. 529 by a vote of 76 to 18.

On the House side, the Judiciary Subcommittee on Immigration, Refugees, and International Law held six days of hearings on the bill in March. On April 6, 1983, after adopting several major amendments, the Subcommittee voted 7 to 1 to report the bill to full Committee. The Judiciary Committee considered the bill on May 3-5, 1983, and on May 5, ordered H.R. 1510 favorably reported to the House of Representatives by a record vote of 20 to 9.

Senate consideration of the Simpson bill virtually duplicated the previous year's actions. The Senate Judiciary Committee approved the bill on April 19 with only one substantive change--the addition of a three-year transitional temporary worker program. After four days of debate, the Senate passed S. 529 by the 76-18 vote on May 18. Texas Senator Lloyd Bentsen supported the measure while Texas Senator John Tower opposed it.

Prospects for the bill were much more uncertain in the House. The Immigration Subcommittee approved H.R. 1510 without significant changes on April 6, but the full Judiciary Committee made several major alterations before reporting the bill. The Committee moved forward the date--from January 1981 to January 1982--by which an illegal entrant must have been in the United States in order to qualify for a specific new "permanent resident" status; made the paperwork requirements in the employers' sanctions proposal

optional for the employer unless he is caught hiring illegal workers; added a transitional temporary worker program similar to the Senate's; added $500 million for border enforcement activities; and required the Immigration and Naturalization Service to secure a search warrant before conducting "open field" searches for illegal workers.

After the Judiciary Committee's vote to pass the bill May 5, the measure was then jointly referred to four other House Committees that have jurisdiction over various aspects of the proposed law. By June 27, three of the four committees had completed action on the bill, making a number of changes:

* The Agriculture Committee added a controversial new "Perishable Crop" program, which would have more flexible rules for perishable crop growers to hire non-immigrant workers on short notice.

* The Education and Labor Committee created a new Immigration Board to consider employment discrimination cases that may result from imposing employer sanctions; mandated a commission to assess labor certification procedures and temporary worker programs; and provided federal per capita grants to schools for the costs of educating children of newly legalized aliens.

* The Energy and Commerce Committee, with jurisdiction over health programs, made newly legalized aliens eligible for emergency services such as those available in Medicaid and for services to pregnant women and children less than 18 years old, and provided immunization, tuberculosis and venereal disease screening and family planning services, funded entirely by the federal government.

After completion of the various House Committees' work in June, the bill languished in the House Rules Committee all summer. At least part of the slowdown was attributable to the difficulty of figuring out a rule that would

permit orderly consideration of the various committee amendments as well as other potential amendments.

Then in October, Speaker of the House O'Neill announced that the bill would not be considered until after the 1984 election. Speaker O'Neill based his action on political concerns that President Reagan would veto any House-passed measure in order to gain favor with Hispanic groups opposing the legislation.

Speaker O'Neill subsequently reversed himself and asked Hispanic members to offer an alternative to be considered with the Mazzoli bill in 1984. On February 1, 1984, Rep. Roybal introduced such an alternative, H.R. 4909, which was co-sponsored by three Texas members--Reps. Gonzalez, Coleman and Ortiz. The primary difference between the Hispanic Caucus version and the Mazzoli bill is H.R. 4909's emphasis on targeted law enforcement efforts and more border patrol personnel, instead of employer sanctions.

The House Rules Committee is holding three days of hearings on proposed amendments to H.R. 1510 and will draft a rule for the bill's consideration on the House Floor. House action is expected to commense the second week in June, 1984.

Conclusion

Policies on citizenship and the integrity of national borders are constitutionally the responsibility of the federal government. However, states, such as Texas, which has the longest border with Mexico, are impacted significantly by the successes or failures of national immigration policies. In his address to the Task Force on Immigration on March 25, 1983, Governor White pointed to the special responsibility of Texas to make suggestions to the federal government regarding effective, practical changes for immigration

policies. Further, Governor White noted that a special opportunity existed at this time to provide state input since the proposed immigration reform legislation was reaching its final, decisive stages before the U.S. Congress.

In keeping with the primary charge of the Task Force and in the interest of timeliness, the recommendations which follow relate primarily to the pending provisions in the Immigration Reform and Control Act of 1983 (the "Simpson-Mazzoli bill").

Thus, the following report includes recommendations on each major component of the proposed legislation: employer sanctions, enforcement, legal immigration, temporary workers, asylum, legalization and federal reimbursement. Furthermore, suggestions are made regarding the U.S.-Mexico relationship and certain aspects of documentation not directly addressed in the bill.

Each section includes a discussion of the issues, particularly as they affect Texas, a summary of testimony on the issue before the Task Force, and the specific recommendations (with rationale for each) pertaining to the issue.

A. UNITED STATES - MEXICO RELATIONSHIP

The relationship between the United States and the Republic of Mexico is relatively youthful, in comparison to European and Asian countries, and is continuously evolving. It can be said to date back to the formation of the United States as a sovereign nation when, as a newly established and expanding nation, it found itself in close proximity to the territory controlled by Spain that was later to become the Republic of Mexico. Since that time the relations between the two nations have been characterized both by considerable cooperation on a number of major concerns and conflict on other issues. The increasing interdependence between the two economies, the deep social and cultural ties, and differences in perspective on certain issues have forged a complex but mutally supportive relationship between the two neighboring nations.

Within the complex and evolving relationship between the United States and Mexico, five policy areas are particularly noteworthy: trade, investment, tourism, energy, and immigration. Unilateral changes in any of these five areas on the part of either nation will have significant consequences on the relations between the two. This fact was eloquently presented at several of the public hearings where numerous individuals testified on the importance of bilateral actions and the need to understand that the issue of immigration is only one of the areas that concerns both nations. As stated by a former immigration judge in El Paso, there is a need "to integrate immigration policy with foreign policy." A former ambassador of the United States to Mexico, a League of United Latin American Citizens (LULAC) representative, and others, indicated that the Governor's Task Force on Immigration should recommend the establishment of a United States - Mexico migration commission

to examine alternatives and suggest a policy on migration that would benefit both countries.

Other individuals testifying before the Task Force, such as local government officials, a representative from a cattle raisers association, an executive of a major border city bank, and several immigration attorneys, emphasized the need to consider not only short-term benefits that may accrue to any one sector of the economy or society, but also the long-term benefits that will accrue to both nations. In their testimony, they placed emphasis on the need to address Mexico's current economic crisis. The suggestions ranged from providing direct financial aid, to increasing the number of "twin plants" (maquiladoras) both along the border and in the interior of Mexico. Underlying this testimony was the suggestion that the United States should cooperate with and actively assist the Republic of Mexico as it acts to stabilize the peso and diversify its own economy, and thus reduce the incentive for citizens of Mexico to emigrate.

Both of the issues discussed above -- bilateral cooperation and the need to improve the economies of sending countries -- were also discussed and endorsed by the Select Commission on Immigration and Refugee Policy in its final report after two years of study and deliberation. The Governor's Task Force on Immigration shares the aforementioned concerns.

Recommendations

The Task Force recommends the development of long-range solutions which emphasize bilateral economic planning and development between the United States and Mexico and the establishment of bilateral commissions between the two nations, which should also include representatives of the private sector, to study and make recommendations regarding the impact

of immigration and the solutions to mutual economic problems.

Rationale

Although the relationship of the United States to other Western Hemisphere nations is of paramount importance, the proximity and strong interdependency between the Republic of Mexico and the United States places the relationship of these two neighboring nations in a special status. Actions on the part of the United States on vital issues like immigration reform need to be considered, not only in terms of short-term reductions in the immigration flow, but also with a perspective towards more long-term solutions which will gradually reduce the incentives to migrate from Mexico. The development and vitality of Mexico's economy are important issues that should not be overlooked in federal immigration reform legislation or the implementation of such legislation.

While it is recognized that Mexico is only one of many sources of undocumented workers, the fact that United States and Mexico share a common border means new federal immigration policies regarding Western Hemisphere immigration directly affect our immediate neighbor. The effects should be monitored closely and Mexico should be kept informed regarding the nature of the legislation and the steps for implementation as these are taken. Furthermore, Mexico will require assistance in stabilizing the peso and in developing her economy to create jobs which will reduce some of the push factors. Mexican cooperation should be sought in regulating the legal migrant flow and its gradual reduction to limit to the minimum possible untoward consequences for that nation.

B. EMPLOYER SANCTIONS

Employer sanctions as a concept are not new. Employers are keenly aware of the federal tax and labor laws which regulate their industries and of the sanctions which may be imposed if they do not comply. Discussions on employer sanctions in reference to the hiring of undocumented aliens are also not new. Legislative proposals to prohibit the employment of undocumented aliens and any penalties on those who employ such individuals date back to the debate that preceded the passing of the Walter - McCarran Act in March 1952. That Act became codified as the Immigration and Nationality Act of 1952. Under the law, the willful and knowing importation, transportation, or harboring of undocumented aliens is a felony, punishable by a $2,000 fine or imprisonment up to 5 years, or both, for each alien. As a result of strong opposition, employment of aliens was explicitly excluded from penalty through what is popularly referred to as the "Texas Proviso" which reads as follows: "Provided, however, that for the purposes of this section, employment (including the usual and normal practices incident to employment) shall not be deemed to constitute harboring."

The concept of sanctions against employers who "knowingly" employ individuals who are not authorized to work, resurfaced as a national issue in 1971 when the 92nd Congress held extensive investigative and legislative hearings. Subsequently, a bill containing an employer sanctions provision was introduced by Representative Peter W. Rodino, Jr., Chairman of the House Judiciary Committee, and was passed by the House in September 1972. The Senate, however, did not act on the proposed legislation. In the ten years that followed, the concept of employer sanctions was reintroduced relatively consistently in proposed legislation and became more complex as it was

gradually linked to provisions allowing for the legalization ("amnesty") of undocumented residents and the expansion of the foreign temporary workers program (H-2). The two latter provisions were intended to make the concept more acceptable to employers and other opponents. Despite a broader acceptance and endorsement of immigration reform providing for employer sanctions by the Nixon, Ford, Carter, and Reagan Administrations, such legislation has not been enacted. The outcome of the current proposed legislation is now pending in Congress.

In the proposed federal Immigration Reform and Control Act, the first title provides for the amendment of the Immigration and Nationality Act to include a section on the unlawful employment of aliens. The section reads as follows:

> It is unlawful for a person or other entity after the date of the enactment of this section to hire, or to recruit or refer for a fee or other consideration, for employment in the United States -
> (A) an alien knowing the alien is an unauthorized alien ... with respect to such employment
>
> Note: Although the above is the House version, the Senate version is substantively the same.

Employers or other entities that are found to have "knowingly" hired, recruited, or referred an individual unauthorized to work <u>after</u> enactment may be issued a notice of violation and subsequently fined or imprisoned, or both. The civil penalties in the House and Senate versions for first and second fines are comparable -- $1,000 and $2,000 respectively, while the penalties for additional violations differ more. In the House version, after two or more instances, the entity may be fined not more than $3,000, imprisoned not more than one year, or both, for each violation. On the other hand, the Senate version provides that the entity not be fined more than $1,000, or imprisoned more than six months, or both, for each violation.

The centrality of the employer sanctions provision in the proposed immigration reform has resulted in considerable attention to this provision on the part of both supporters and critics. The relative magnitude of testimony presented on this issue before the Governor's Task Force on Immigration reflected the broad concern with this provision. Moreover, the testimony presented, both for and against employer sanctions, also reflected the arguments in the Congressional debate on the proposed legislation.

In general, proponents contend that employer sanctions are necessary due to the excessively large number of undocumented aliens who are present and "undermining" this country. (Some claim there may be as many as 12 million aliens currently working or residing in the United States.) Specifically, attention is drawn to the perceived negative impact of the undocumented worker on the labor market: native and resident workers are displaced and must seek public assistance or unemployment compensation; wage levels are depressed; working conditions worsen; minorities and the low-skilled workers suffer the most because they occupy the types of jobs which undocumented aliens will seek.

Undocumented individuals are also said to strain public services and public assistance programs; create a drain in the United States balance of payments through remittances to their families in their country of origin; contribute disproportionately to the increase in crime; obstruct efforts to control population growth; and, in general, destroy the "social fabric". One additional concern being voiced is that the "masses of illegal aliens will be fertile ground for subversion within the United States" (San Antonio Express - News, June 5, 1983).

Opponents of employer sanctions, on the other hand, contend that sanctions offer a simplistic "quick-fix" solution to a situation which is not due

solely to the presence or entry of undocumented individuals. Opponents further argue that a determination should first be made of the actual impact of undocumented individuals on the U.S. economy. Without proper evidence, the arguments of displacement and other negative labor market impacts, which employer sanctions are supposed to solve, remain conjectural and without a real basis. Moreover, opponents point out that as more empirical evidence and research has become available, the previous official and unofficial estimates have gotten smaller. Some of the estimates that have been offered are the following:

- 4 to 12 million by former Commissioner of Immigration, Leonard F. Chapman, Jr., in the early part of 1975;
- 8.2 million by Lesko Associates in the latter part of 1975;
- 3.5. to 6 million in 1978 by staff of the U.S. Bureau of the Census;
- the suggestions of Bean, King, and Passel that the realistic upper bound may be no more than 4 million and with the probable total number being even less;
- and the estimate presented in April of 1983, by U.S. Bureau of the Census staff that the inclusion of 2.047 million undocumented aliens in the 1980 census (of which 931,000 or 45.5% were aliens born in Mexico) is a close approximation of the total number of undocumented aliens in the United States.

In addition, opponents argue that there is no clear evidence of significant citizen or resident worker displacement, and thus, no clear evidence that the undocumented in the labor force are responsible for higher levels of unemployment. In support of their arguments, the opponents cite the lack of consensus on the part of economists on whether the displacement ratio is zero

(no displacement) or 1 (for every undocumented worker holding a job, one American or resident worker lacks a job) or points in between.

Employers are concerned about the imposition on private employers of an enforcement responsibility properly belonging to the government. Furthermore, the opponents make reference to the existence of high unemployment in areas not known to have large numbers of undocumented workers and, conversely, the existence of low levels of unemployment in areas known to have significant numbers of undocumented workers.

Minorities are concerned in particular with the discriminatory impact that employer sanctions could have. They contend that employers will be fearful of hiring individuals (1) who look or sound "foreign" in the event that they might be undocumented, or (2) who use the pretext of employer sanctions as grounds for refusing to hire minorities. Although the intent is different, the outcome is the same in both cases. Minorities fear that the provision that is being promoted as aiding minorities and low skilled workers (who it is said are harmed by undocumented workers the most) will ultimately place them in a worse situation with inadequate recourse to redress for employment discrimination on the basis of national origin.

According to the opponents of employer sanctions where there is no adequate temporary worker program, undocumented workers are industrious and hard working; avoid situations and activities such as public services or crimes which will lead to their discovery; enter the United States on a temporary basis; and contribute directly to the tax system through transactions involving sales tax, gasoline tax, withholding tax, social security taxes, etc., and indirectly to property taxes through inflated rents. Some argue further that because of the young age structure and short term of residency in the United States undocumented workers are directly

subsidizing the social security system.

In sum, opponents contend that undocumented workers are an asset to the American economy in general, and the minority population in particular.

In view of these arguments and the testimony received, the Task Force has adopted the following preamble to its recommendations:

The Task Force is concerned that employer sanctions may not be enforceable: in light of (a) the international economic and political pressures that create illegal immigration; (b) the historical understaffing and funding of the U.S. Immigration and Naturalization Service; and (c) the experience with employer sanctions in certain European countries and other states of the United States that have enacted some form of employer sanctions. The Task Force is also deeply concerned that employer sanctions may result, if not carefully monitored, in unintentional discrimination against American citizens and permanent resident aliens that appear "foreign". Nevertheless, the Task Force is aware that the Immigration and Naturalization Service and the Congressional leadership feel that employer sanctions, together with substantial additional funding, will enable the Service to enforce more effectively United States immigration laws and that no other viable alternatives are now pending for consideration before Congress.

Should Congress, in light of such circumstances, adopt employer sanctions, the limitations and concerns enumerated below also should be incorporated into the legislation.

1. The Task Force recommends that only those employers who knowingly hire or retain as employees undocumented aliens should be subject to sanctions.

Rationale

It is the belief of the Task Force that only an employer who has full knowledge that an applicant for employment is an undocumented alien and intentionally gives employment to the individual, then such employer should be subject to legal sanctions. Employers, who in good faith rely upon appropriate documents presented by the aliens, or who receive referrals from a state employment agency or labor union, should not be subject to sanctions.

2. The Task Force recommends, if the employer sanctions provision of the proposed legislation is enacted, there should be a hold-harmless educational period for employers until an acceptable identification has been developed that would evidence the legal right of an employment applicant to work in the United States.

Rationale

Given the concern among employers that they will be penalized for hiring an individual who may appear to be authorized to work and given the susceptibility of existing identification documents to be counterfeited, the Task Force believes that if employers could simply rely on an existing federal identification document, such as the social security card, then employer sanctions would be more easily implemented by employers. (This recommendation should not be construed in any way as proposing or supporting the introduction of a national identification card.)

3. The Task Force recommends, if the proposed employer sanctions provision is enacted, that any referral of an employment applicant from a state or federal agency would, by itself, be prima facie evidence that the

applicant is legally authorized to work.

Rationale

The Task Force concluded that if a job applicant is referred to an employer by a federal or state agency then the employer should not be subject to a penalty for providing employment to that individual. Moreover, since the provision in the proposed legislation on "unlawful employment of aliens" includes referrals, that is more the reason why employers should not later be sanctioned for employing the referred individual. The Task Force does not accept the contention made by the U.S. Department of Labor that for it to request of a job applicant the same documentation that would be required of an employer would substantially increase its work load or budget.

4. The Task Force recommends that employers should be able to rely upon referrals by unions and other private agencies providing employment services and that employers should not be liable in the event of error on the part of such organizations.

Rationale

Employers who hire individuals referred by unions and similar organizations must assume that aliens referred by those organizations have proper authorization to work in the United States.

5. The Task Force recommends, if the employer sanctions provision is retained, that a three-year "sunset" provision be provided (after enactment) and that both Houses of Congress be required to approve its continuation contingent upon a formal impact review of the employer sanctions provision.

Rationale

A major change to the Immigration and Nationality Act such as the provision for employer sanctions, should be reviewed in terms of its impact on individuals, groups, and the business community. If sanctions found to have the intended effect of controlling illegal immigration and improving the economy, then they should be continued; otherwise, the sanctions should expire. The requirement that both houses of Congress approve its reauthorization would guarantee a wider discussion and debate on the merits of the provision. The three-year period should coincide with the period provided in the legislation for the President to develop a foolproof identification system for Congress to consider.

6. The Task Force recommends, if the proposed employer sanctions provision is enacted, that the federal government establish, in addition to the U.S. Civil Rights Commission, a task force or other group within an appropriate federal department or agency to monitor and review the overall impact of employer sanctions and specifically its potential discriminatory impact.

Rationale

To subsume the monitoring and review function under an existing federal agency or task force would dilute the importance and necessity to closely examine the implementation of this section of the proposed immigration reform.

7. The Task Force recommends, if the proposed employer sanctions provision is enacted, that the Governor or the Attorney General of Texas establish an office to monitor, review, and assist in the implementation of this

and other provisions of federal immigration reform. (See Asylum recommendation No. 1).

Rationale

An effective monitoring, review, and implementation function for employer sanctions and other provisions within the proposed legislation necessitates an office outside of the federal government to closely examine the implementation and impact of the pending reforms. In particular, because of the significant impact that will be felt in Texas, the state government needs to monitor and continuously evaluate the impact and to periodically advise the federal government of potentially adverse impacts on the state.

8. The Task Force recommends the active and assertive enforcement of existing labor laws such as minimum wage and overtime, social security provisions, field sanitation requirements, OSHA, workman's compensation, child labor laws, crew leader registration, transportation safety, and employment discrimination statutes, and that the funding of agencies responsible for enforcing these laws be increased to adequately carry-out such enforcement.

Rationale

The primary concern is that some employers may hire undocumented aliens because they are more willing to work in substandard working conditions. Therfore, increased enforcement of existing laws would eliminate the incentive for some employers to hire undocumented aliens; at the same time, stricter enforcement would benefit the entire United States workforce.

Another concern among those who would favor this approach over employer sanctions is the potential discriminatory impact of sanctions on minority employment and the possible lack of enforcement or safeguards against

employment discrimination. Irrespective of enactment of an employer sanctions provision, there should be an adequate and assertive enforcement of existing work and labor laws. The implementation of a strong enforcement effort will assist not only in deterring the hiring of undocumented aliens but also serve as a benefit to a substantial part of the workforce.

9. The Task Force recommends retaining the document verification procedures in the Simpson-Mazzoli proposed legislation as passed by the Senate and reported by the Committee on the Judiciary in the House of Representatives rather than supporting the Education and Labor Committees' alternative.

Rationale

The Task Force members believe that the proposed document verification procedure amendments by the Education and Labor Committee in the House of Representatives will most likely complicate rather than improve the procedures. The proposed amendment to exempt state employment services agencies from the document verification procedures, by deleting Section 274A (b)(5), creates a double standard in the procedures and could complicate the enforcement of employer sanctions. (For related recommendations regarding the area of documentation see Section I below.)

10. The Task Force recommends retaining the penalty structure in the Simpson-Mazzoli proposed legislation as passed by the Senate and reported by the Committee on the Judiciary in the House of Representatives rather than the Agriculture Committee alternative.

The proposed amendment by the Committee on Agriculture to replace the fixed penalty structure under the employer sanctions provision with sliding

scale penalties--$100-$1,000 and $500-$2,000 for first and second offenses respectively--diminishes the overall effectiveness of employer sanctions. Moreover, it weakens the implied notion in the provision that similar violations of the law should be treated with the same standard.

C. DOCUMENTATION

The "employer sanctions" section of the Immigration Reform and Control Act, contemplated by the Senate Bill S.529 as passed on May 18, 1983, places considerable reliance upon the validity and trustworthiness of certain state documents and registration procedures. Basically, Section 101 of that bill would add a new Section 274A to 8 United States Code 1324. Simplified, the "employer sanctions" section provides the following:

A. It is unlawful for any person to hire an unauthorized alien if that person knows the alien is unauthorized **or** if Subsection b documentation requirements have not been followed.

B. Subsection b, Section 274A is basically divided into five parts:

1. Employer attestation. The employer must attest under oath that he has verified that the individual is eligible to be employed by examining certain documents.

2. Employee attestation. The individual that is applying for employment must attest under oath that he is either a United States citizen or is authorized to be employed by the Attorney General.

3. Documents. The documents to be produced by the prospective employee and to be examined by the prospective employer are as follows:

   (a) United States passport **or**

   (b)(1) Social security card or birth certificate **and**

   (b)(2) Drivers license or some other state identification containing a photograph.

4. Recordkeeping requirement of employer. The employer must keep copies of the employer and employee attestations as well as photocopies of the documents upon which he relied.

5. Civil and criminal penalties for violating section 274A.

Under Subsection b above, the employer must state that he has "verified" that the individual is eligible to be employed by examining the required documents. Also, the employer has an affirmative defense to a charge of hiring an unauthorized alien if he has complied in good faith with the examination of the required documents and "if the document reasonably appears on its face to be genuine". Section 274A states that within three years the President of the United States shall implement such changes in the documentation process "as may be necessary to establish a secure system to determine employment eligibility in the United States." If the system requires an examination by an employer of any document, the document must be in a form which is resistant to counterfeiting and tampering. Furthermore, the President shall examine existing federal and state identification systems to determine the suitability for use with the permanent system to be developed.

During the public hearings throughout the State of Texas, the members of the Governor's Task Force on Immigration noticed four general areas of concern about the requirements in Section 274A:

A. Employers have expressed apprehension about being penalized for innocent violations of Subsection b requirements, particularly in view of the ease with which prospective employees may obtain false or counterfeit documentation;

B. Employers have expressed concern about excessive recordkeeping requirements;

C. Prospective employees, particularly Hispanics, have expressed apprehension concerning a discriminatory impact caused by employers who are forced to comply with Subsection b requirements; and

D. Certain individuals and groups have expressed apprehension concerning the possible development of an internal passport or a national identification card.

Based on the testimony about documentation problems received at public hearings and meetings, the Task Force has adopted the following recommendations:

Recommendations

1. The Governor should communicate to the Texas Congressional Delegation that the reliance by the federal government upon the validity and trustworthiness of state documentation is unfounded.

Rationale

Based upon public hearings throughout the State of Texas and testimony from members of the Texas Department of Public Safety, the Texas Department of Health (Bureau of Vital Statistics), the U.S. Department of Health and Human Services, (Social Security Administration), the U.S. Passport Office, and the Immigration and Naturalization Service, the Task Force determined that the reliance of the United States government upon existing state and federal documents is unfounded. State documents, such as birth certificates and driver's licenses, and federal documents, such as social security cards, are subject to widespread abuse, counterfeiting, and tampering. False identification documents and cards can be purchased in virtually any major city in Texas. Although alteration and counterfeiting present a major problem, the greatest concern to state agencies issuing identification documents is centered on fraudulent applications and fraudulent use of documents. Birth certificates

and driver's licenses are called "breeder documents" by law enforcement personnel because as base documents they can be used to generate other identification documents. By using fraudulent, counterfeit, or altered breeder documents, a person can obtain almost any other "valid" identification document.

2. The Governor should communicate to the Texas Congressional delegation that the ideal documentation to be relied upon by an employer in Subsection b of Section 274A, if enacted, is the social security card; provided, however, that the law be changed to require every applicant for employment be required to present a social security card to the prospective employer before employment. Social security cards issued in the future should be tamper-proof and counterfeit-proof, with a photograph of the applicant, in accordance with the recommendations of the Inspector General of the United States, Department of Health and Human Services.*In addition, adequate procedures should be implemented to prevent fraudulent applications and fraudulent use of valid social security cards.

Rationale

It is in the national interest to eliminate employment as a lure to unauthorized entry or illegal immigration into the United States. The federal government should assume the responsibility of developing a uniform, non-discriminatory method for identifying and documenting United States citizens and aliens who are authorized for employment. A social security number is already required by each individual who seeks unemployment benefits.

*See False Identification: The Problem and Technological Options, Office of the Inspector General, Department of Health and Human Services (April 1983).

By adding a photograph and by issuing a social security card form that is designed to protect against forgery or reproduction, a substantial improvement in document security could be achieved.

3. Congress should provide for further study in determining the feasibility of developing uniform laws and/or uniform standards for the issuance of birth certificates and driver's licenses throughout the 50 United States as well as uniform technical requirements to avoid counterfeiting and tampering.

Rationale

New technologies have been developed in recent years that make historical methods of counterfeiting and tampering with personal identification documents much easier to detect. At the same time, new technologies can be used fraudulently to generate facsimile or duplicate copies of such documents. The federal government should provide funds and assistance to the states in generating document protection systems that will meet uniform standards and reduce the possibility of undetected counterfeiting or tampering.

4. A state law should be enacted to make it a crime, in connection with obtaining a birth certificate, death certificate, driver's license or any other state issued identification document, to (a) make fraudulent application, (b) counterfeit or alter the document, or (c) make fraudulent use of the document.

Rationale

The current complex and conflicting provisions of state law almost invite abuse. Testimony has established the fact that birth certificates are easily, regularly, and frequently reproduced for illegal purposes. Birth certificate

fraud usually takes three forms: requests by the valid holder of the birth certificate for additional copies (which can then be sold to others), requests for birth certificates of individuals who have died, and outright forgeries.

In Texas, birth certificates presently may be issued or obtained from three different sources: local registrars, county clerks, or the State Registrar in the Bureau of Vital Statistics at the Texas Department of Health. According to the Texas Department of Health, more than 250,000 requests for certified copies of birth certificates are received annually by the State Registrar. About 90 percent of these requests are received by mail from persons residing in all 50 states and in many other nations of the world. The Bureau of Vital Statistics has developed a standard form that is used in requesting a certified copy of a birth certificate from the State Registrar. The Bureau has indicated that it does not believe that requiring the use of a standard application form is practical due to the large number of requests by mail. According to the Bureau, sending a standard application form to potential applicants would be difficult to justify in terms of cost and administration.

5. The Open Records Act should be amended to provide that birth and death certificates filed at the county or local level be classified as not being public records.

Rationale

There is a serious problem in the control of the issuance of certified copies of birth certificates. Under the Open Records Act, (Article 6252-17a, V.T.C.S.) birth certificates maintained by the Bureau of Vital Statistics in the Texas Department of Health, are not public records. Under the provisions of Rules 52a and 53a, Article 4477, V.T.C.S., copies of birth certificates are

also filed at the local level in the offices of local registrars and county clerks. Birth certificates filed at the local level, however, are not excluded from public disclosure under the Open Records Act (Texas Attorney General Opinions No. ORD-307, 1982 and No. ORD-338, 1982). Since birth certificates filed at the local level have been ruled to be public records, it is possible for a person to obtain a certified copy of another person's birth certificate the information needed to request and to be issued a certified copy by the State Registrar. Therefore, the possibility of persons obtaining certified copies at the local level for fraudulent purposes could nullify efforts to control access to birth certificates filed in the Bureau of Vital Statistics. This unusual and unworkable situation should be corrected through legislative action to amend the Texas Open Records Act.

6. State funding should be made available to implement Rule 51a of Article 4477 of the Texas Revised Civil Statutes, providing for cross-checking of birth certificates and death certificates by the Bureau of Vital Statistics. In addition, it is recommended that Rule 51a be amended to provide for birth/death matching to include deaths of all persons under the age of 55.

Rationale

Rule 51a, Article 4477, V.T.C.S. was amended in 1979 to provide that the Bureau of Vital Statistics match the death certificates of decedents under 18 years of age with the birth certificates of the decedents, if born in Texas. Although requested, funds have not been appropriated to implement this program. It has been recommended that birth-death matching include deaths of all persons under age 55. If interstate matching of birth and death records is instituted, it probably would be more economical and expedient for states to transmit their

death certificates to a central office (possibly the National Center for Health Statistics) where sorting and mailing of data back to the appropriate states could be centrally performed. It is acknowledged, however, that birth-death matching would have no impact on the widespread practice of filing fraudulent applications for the birth certificates of living persons.

7. The Governor should implement a program of education of employers in the State of Texas as to the identification and detection of false documents, particularly if state or federal legislation is enacted requiring employer examination of state identification documents.

Rationale

Testimony before the Task Force has stressed the need for a secure identification system to determine employment eligibility. Current federal reform proposals are based on the use of existing documentation to verify eligibility because proposals reviewed for a more secure system all offered distinct problems. Many witnesses have opposed a new "secure" system on the grounds of cost.

At the same time, there are legal questions regarding the constitutionality of a centralized data bank for employment verification. Such systems have been challenged as violating an individual's right to privacy, right to travel, and rights secured under the commerce clause. Additionally, questions have arisen regarding the discriminatory impact of an employment verification system, especially on the Hispanic and Asian populations.

In any event, employers would need to be provided information and technical assistance so they will know proper document review and records-keeping procedures.

D. ENFORCEMENT

The Immigration and Naturalization Service (INS) has been the target of substantial criticism from within and without the government. Some observers attribute certain problems within INS to the seemingly contradictory dual mission of providing a public service (facilitating the entry and stay of eligible individuals) and enforcing a law (preventing the entry and stay of ineligible individuals). Other problems, such as understaffing and underfunding, are widely recognized and cited as the reasons the agency is not able to adequately enforce immigration law.

The two perennial problems of underfunding and understaffing of INS are said also to be the cause of a series of other problems such as the "uncontrollable" overtime paid, decrease in administrative efficiency, and low morale among field officers. As some of these factors have been manifested in allegedly improper behavior, members of Congress have directed INS to insure the equitable treatment of those who come in contact with the agency and to aggressively seek out and investigate instances of civil rights violations and serious misconduct on the part of INS personnel.

Members of the Task Force were told at several public hearings of long lines with three or four hour waits at district INS offices for those needing routine services, of the almost impossible task of reaching the office by telephone, and of the long delays in responses to the inquiries of immigration attorneys. The Task Force was also presented with numerous allegations, particularly at the Dallas and Lubbock public hearings, of "abuse", "harassment", and "brutality" on the part of INS officers. At the Dallas public hearing, the Task Force members were told that INS officers disrupted church services in Wichita Falls and Dallas, and that a "raid" took place at

a Dallas elementary school where parents who were taking their children to school were apprehended by INS officers and where Hispanic teachers in the school were questioned. Immigration and Naturalization Service officials told a different story and indicated that officers do not conduct such "raids" and, that in this particular case, the INS vehicle happened to be parked near the school only to be out of sight of a place of employment under investigation for hiring undocumented workers.

Other individuals presenting testimony to the Task Force indicated they were concerned about the involvement of local law enforcement agencies (city police and county sheriff's departments) with enforcement of immigration laws. An attorney in Lubbock testified that local law enforcement officers have become involved in enforcing federal immigration law by targeting certain lounges and churches for raids by INS officials, or by "holding" in jail individuals who were suspected of being undocumented until INS officers would investigate the case. A similar concern was voiced by a League of United Latin American Citizens (LULAC) representative in El Paso who testified that allowing local law enforcement officers to enforce immigration law would lead to increased discrimination against Hispanics on the part of police officers in that city.

All Immigration and Naturalization Service representatives that testified before the Task Force underscored the need for additional enforcement personnel just to handle the current workload. The workload, they further indicated, is expected to increase significantly and become an administrative "nightmare" if the proposed federal immigration reform legislation is enacted.

The Task Force also heard from concerned citizens in Houston and Brownsville who recommended that the nation's military forces be utilized to aid

the Border Patrol in carrying out their responsibility of preventing the unauthorized entry of individuals.

Irrespective of the precise origin of the problems within INS, the proposed Immigration Reform and Control Act of 1983, if enacted, will place a considerable added responsibility on the agency. Not only will the enforcement division be affected but the service division as well. If the proposed federal immigration reform is not enacted, adequate fiscal resources and staff will still be needed by the service division to dispose of the massive backlog of visa applications and by the enforcement division to handle the increased volume of individuals trying to enter without inspection.

In light of the above, the Task Force has adopted the following recommendation:

The Task Force recommends that Congress insure that adequate resources be given to both the enforcement and examinations/adjudications divisions within the Immigration and Naturalization Service (INS).

Rationale

It is generally acknowledged that INS in general, and its enforcement branch in particular, has been historically underfunded. Such underfunding has been a major cause in the inability of INS to enforce existing immigration laws. In order to more effectively prevent and deter the unauthorized entry of persons into the United States, and thus move toward achieving the goal of immigration control, the task force recommends that real dollar increases be allocated to both the enforcement and service divisions of INS. Adequate funding and better balance of enforcement and services will facilitate the optimal performance of INS responsibilities. The proposed Immigration Reform Act, if enacted, will necessitate substantial additional funding; otherwise, the law will be unenforceable.

E. LEGAL IMMIGRATION

Immigration policy embodies the perceived right of a nation to determine within its territory the entry, stay, and departure of individuals. The formulation or modification of immigration policy will generally address the issues of quantity, source of origin, criteria, and process or procedure. Agreement on policies in each of the areas, however, is not easily achieved. United States immigration policy and its evolution reflects the difficulty of establishing policy that not only is acceptable to competing interests, but also suits international circumstances and meets the defined national interest.

The proposed Immigration Reform and Control Act of 1983 seeks to modify the areas of quantity, source of origin, criteria, and process. Title II, part A of the Act, in the Senate version, seeks to substantively modify the existing "preference" or "quota" system. The House version, in contrast, proposes two principal changes in this area: increasing the ceiling for dependent foreign colonies from the present 600 to 3,000 annually; and increasing the per country ceiling for Mexico and Canada to 40,000. Under the Senate version, the children, spouses, and parents ("immediate relatives") of a citizen or "special immigrant" remain without a numerical limitation as they have been, while the criteria and quantity of the other categories in the preference system are modified. One of the most significant modifications is the change in the family preference category (5th preference) which covers brothers and sisters of adult United States citizens; the category is narrowed to cover the unmarried brothers and sisters of adult United States citizens.

Although the change does not seem significant on the surface, the Task Force heard several statements from individuals and groups, such as from the representative of a Chinese-American civic organization in Houston, who testified that this particular change would cause a "great hardship" on Chinese as well as Latin American families that place considerable emphasis on extended families. Hispanic attorneys and others also expressed concerns with the proposed change to the preference system in general and the fifth preference in particular.

On the matter of raising the per country ceiling of visas for Canada and Mexico to 40,000, and having the unused portion of visas of one country being allocated to the other country (as provided for in the Senate version), the Task Force observed that those who testified on this issue testified in favor of it.

On the issue of placing restrictions on foreign students, testimony presented indicated that it was not believed to be in the best interest of this country to significantly reduce the flexibility of our universities in seeking the best available talent as represented by foreign students. A representative of a Chinese civic organization in Houston testified that the United States government in conjunction with other countries, already has instituted an exchange scholar program where countries require certain scholars to return upon termination of their training in the United States. He further stated that if a foreign government was fearful of "losing a top scientist", it could designate him as an exchange scholar. Where there are proven shortages of qualified United States workers, the United States should look to highly qualified aliens to fill this shortage. In contrast, a representative of the American Engineering Association pointed out that in certain professions, such as engineering, there is no shortage of United

States graduates and suggested that there should be a limit on the number of foreign students enrolling in such professions.

A representative of the National Association of Foreign Student Affairs testified at the El Paso hearing that there is no compelling reason to pass legislation that requires a two-year foreign residence of all foreign students without regard to the professional talents needed in the United States. The Task Force did not discuss in depth all the technical areas of the selection of immigrants and non-immigrant categories. Consequently the recommendations below address the limited number of areas that were raised in the public hearings.

Recommendations

1. The Task Force recommends that the present family reunification preference categories and the open ceiling on these categories remain unaltered.

Rationale

Some of the changes proposed in the Immigration Control and Reform Act of 1983 deemphasize family reunification, which is the underlying basis of the existing Immigration and Nationality Act. Such a change will result in considerable hardship to United States citizens wishing to be reunited with "immediate relatives" and may promote the future unauthorized entry of those relatives.

2. The Task Force recommends the endorsement of the general concept which would raise the number of visas from 20,000 a year to 40,000 a year for

Canada and Mexico, with any unused visas of one country being allocated to the other country.

Rationale

The historical interdependence brought about by shared borders requires that the United States grant special consideration to both Canada and Mexico in its immigration policy. In the context of the other provisions in the proposed legislation, the concept of raising the numerical limitation of visas is a positive gesture on the part of the United States toward its two immediate neighbors. Such an increase would, although modest in light of the fact that there were no numerical restrictions on the number of qualified applicants from the Western Hemisphere prior to 1965, nevertheless reflect our particular concern with immigration from our bordering countries. It would also assist in alleviating, in part, the existing visa backlogs under the present quota system.

3. The Task Force recommends that foreign graduates of universities in the United States wishing to apply for either temporary or permanent residency visas be granted equal treatment in the visa application process, and not be required to return to their country of origin for two years prior to application.

Rationale

The proposed two-year foreign residence requirement for all foreign graduates applying to adjust their status to permanent residency will have an unwarranted discriminatory effect upon students by placing an unjustified burden upon this category, a burden not placed upon other non-immigrant classifications applying for adjustment (such as tourists, crewmen,

investors, and other temporary workers). Subjecting all foreign graduates to a requirement to return home for two years will deprive the United States of highly qualified alien graduates of United States universities and will deprive United States businesses of the opportunity to hire such highly skilled professionals where there are proven shortages of qualified workers in this country. It does not make sense to place such an onerous requirement upon foreign graduates. Furthermore, physical uprooting for two years may impose exceptional hardship upon the U.S. citizen spouse, or school-aged children of the student, who may have studied many years in the United States.

The proposed requirement is based upon inaccurate factual presumptions and, even if enacted, will not achieve the desired results. Statistics have shown that most students do return home following graduation. Moreover, experience reveals that the existing labor certification process, with its requirement that the employer prove that the alien's skills are truly in short supply is an effective safeguard. The requirement insures protection of U.S. workers without an unjustified burden being imposed upon students or other nonimmigrant aliens.

F. TEMPORARY WORKERS PROGRAM

The economic growth of the Southwest in the second half of the nineteenth and in the present century, has been closely linked to the availability of Mexican labor. The development of the railroads and the expansion of mining and agriculture, as well as other industries, relied significantly on the authorized and unauthorized entry of a sizeable labor force from Mexico. Although most discussions of "temporary workers" generally focus on individuals entering the United States under the H-2 provision of the current Immigration and Nationality Act, other writings point out that H-2 workers are only the de jure portion of the total temporary workers which also includes de facto segment who enter the country without authorization. In other words, the undocumented immigrants also can be thought of as temporary workers because of the type and duration of the work performed.

Formal provisions for the importation of temporary foreign labor came into existence with the passage of the Immigration Act of 1917, under which temporary workers from Mexico, and later including Canada, were allowed entry. Under the ninth proviso of Section 3 of the Act, the Immigration Commissioner was authorized to suspend the contract labor prohibitions, the head tax, and the literacy test requirements of the Act for individuals entering temporarily for agricultural employment. Section 3 of the 1917 Act, the special legislation enacting the bracero program that lasted from 1942 to 1964, and the Immigration and Nationality Act of 1952 that established the H-2 provision, represent the principal legal provisions under which temporary workers have entered the United States.

The current H-2 provision with a 1976 amendment relating to foreign medical school graduates defines a temporary worker as follows:

> (h) An alien having residence in a foreign country which he has no intention of abandoning...(ii) who is coming temporarily to the United States to perform other temporary services or labor, if unemployed persons capable of performing such services or labor cannot be found in this country, but this clause shall not apply to graduates of medical schools coming to the United States to perform services as members of the medical profession.

The H-2 provision gives the U.S. Attorney General discretionary authority to admit into the United States nonimmigrant aliens for the purpose of performing labor or other services for temporary periods of time. However, there are certain conditions which must exist before the Attorney General can act: it must be shown that there are no United States citizens who are qualified and available to perform such labor or services, and that there must be reasonable assurances that there will not be an adverse effect on United States citizens similarly employed.

Section H-2 of the Act, and implementing regulations, provide that the Attorney General may consult with other agencies of the federal government in carrying out this authority. Consequently, the Attorney General requests the Secretary of Labor (a) to certify that United States workers are not available to fill the positions for which an employer has requested to employ aliens; (b) to issue rules and regulations as to the terms under which nonimmigrant aliens may be admitted and employed in this country; and (c) to determine annually an adverse effect wage rate which shall be the minimum wage that must be paid to such temporary foreign workers.

Nationally, some 15,000 to 18,000 agricultural workers are admitted each year under the H-2 program to work in agriculture and other industries. While the number is not large, the impact of H-2 entries tends to be concentrated in certain areas and occupations. Several hundred producers,

including apple and peach growers in the East, some tobacco growers in the Southeast, sugar producers in Florida and Louisiana, and sheep ranchers in the West have used the program over the years to bring in needed workers. The bulk of them have come from the British West Indies, but some have come from Mexico and Central or South American countries. Employers in Texas, however, have not participated to any great degree in the H-2 program. According to Texas Employment Commission figures, only four H-2 workers have been certified for employment in Texas during the past four years. Two often cited reasons for the low utilization of the provision are the wide availability of undocumented workers and the bureaucratic requirements of the U.S. Department of Labor.

The proposed expansion of the H-2 provision in the Simpson-Mazzoli bills has not been free of debate. Testimony presented to the Governor's Task Force on Immigration mirrors the broad debate carried out in other circles.

Some proponents of an expanded H-2 program argue that given the existant shortage of native or resident workers, and the compounding of this shortage if the employer sanctions provision is enacted, the only viable alternative would be a major legal temporary workers program. The stated shortage is said not to be the result of a real lack of workers, but the consequence of social programs, or "welfare," which have made native and resident workers "lazy" and unwilling to work. As stated by one agricultural representative, "Americans would rather sit in their easy chairs, drink beer, and collect welfare." Other proponents, on more humanitarian grounds, argue that a legal temporary workers program fashioned along the lines of European "guestworker" programs would be better than a de facto illegal program which allows the abuse and exploitation of workers because of their illegal status. It is

further stated that the choice is one between a planned or an unplanned immigration policy, between legality and illegality. Moreover, it is also asserted that a planned temporary workers program will benefit the low-skilled and minorities who principally compete with undocumented workers.

Opponents of the H-2 provision and its expansion, particularly as it concerns agricultural workers, argue that it will cause the further displacement of native and resident workers, depress wages, obstruct efforts to unionize workers, and result in an undemocratic two-class labor force. Others are concerned that H-2 workers, because of their concentration in certain regions and occupations, may come to dominate particular industries. Concern is also expressed about the federal commitment to protect the rights of temporary workers, particularly in light of the abuse in the bracero program despite explicit formal safeguards, and the absence of an assertive effort to enforce existing labor laws when it pertains to farm workers.

At the public hearings sponsored by the Task Force, approximately forty percent of those testifying on the temporary worker provision favored the provision unconditionally. Two additional individuals stated they would go along with it under certain conditions. One of these, an individual representing a church-based organization in Dallas, stated that he would go along with the provision if jobs to be filled by temporary foreign workers would first be made available to native workers. The other individual, a Dallas immigration attorney, agreed with the provision if it guaranteed satisfactory living and working conditions for the temporary workers. Although the majority of the supporters are associated with agricultural interests, the supporters also included a League of United Latin American Citizens representative, a labor union, Immigration and Naturalization Services representatives, a restaurant association representative, and a political science professor.

The majority of individuals in agricultural industries who testified indicated that the sudden cut-off in the supply of undocumented workers resulting from employer sanctions and improved border enforcement would cause economic hardship where the local labor force does not provide sufficient numbers of employees to satisfy an employer's requirements. The degree of economic hardship would correspond to the degree of the employer's dependence on a work force with substantial numbers of undocumented workers, as well as the nature of the local work force. As stated by the Texas Farm Bureau and many farmers and ranchers at the hearings, the present and proposed temporary foreign worker programs do not satisfy the very real needs of a large segment of Texas agricultural producers, the majority of which are small family-owned-and-operated farms and ranches employing only a small labor force. According to the 1978 Agriculture Census and the Texas Department of Agriculture, there are 66,456 such operations representing 34% of all Texas agricultural enterprises, and 92% of all Texas farm and ranch employers.

Individuals testifying in opposition to expansion of the H-2 program (60%) were generally concerned with displacement of existing farm workers and potential exploitability of temporary workers who would be unaware of their rights. Several of those that testified against the H-2 program, such as a local union in El Paso, an agricultural workers representative in Brownsville, and an immigration services representative from Laredo, who spoke of the H-2 program as a mechanism creating "slaves" or a "cheap exploitable labor force." A law student association president in Lubbock and a farm worker organization representative in Brownsville testified that the use of H-2 workers in Presidio, in June 1977, to harvest onions, resulted in the displacement of 23 families who were not on public assistance and were willing to work; furthermore, the local labor recruitment process acted to

discourage local workers from applying as available. An opponent to the current H-2 provision and its proposed expansion, representing a social service agency in Laredo, testified that even though Texas industries may not be utilizing H-2 workers, industries in other states are assisted by the Texas Employment Commission (TEC) in facilitating the entry of H-2 workers. According to this individual, a Virginia tobacco grower recently brought in 264 Mexican workers through Laredo with the assistance of the local TEC office which certified the unavailability of local workers. It was further stated that the reason for the reluctance of local farm workers to present themselves as available to TEC was that the Virginia grower did not offer the same travel arrangements to United States workers as he did to Mexican workers.

The Task Force considered all arguments on the temporary foreign worker issue and approved the following specific recommendations.

1. The Task Force opposes a large scale importation of foreign workers without regard to the availability of United States workers.

Rationale

The large scale importation of foreign workers may undermine the intent of the proposed immigration policy reform, which is to protect United States workers from adverse competition in the labor market. A large scale guest-worker program may not only result in adverse competition but may directly contribute to an increase in unauthorized entry, or indirectly, in the case of Mexico, by drawing a larger number of individuals to the Mexican border cities, thus expanding the unemployment in those cities. Increased levels of unemployment in border cities will have an impact on future unauthorized entry into the United States.

2. The Task Force recommends, if Congress approves the employer sanctions provision, that a workable provision must be included to allow the employment of foreign workers on a temporary legal basis when and where they are needed by employers who can prove the unavailability of qualified, willing, and able United States workers.

Rationale

Given the existing significant dependency on undocumented aliens on the part of Texas employers, particularly by agricultural employers, the economic survival of certain sectors of the economy that have difficulties recruiting United States workers will depend on the availability of foreign workers.

3. The Task Force recommends that the U.S. Department of Labor not require more than 50 days from the time of filing a temporary worker's job order to the time of approval of that order.

Rationale

A requirement of more than 50 days places the agricultural employers, who must harvest their crops in a very difficult economic situation. If labor requests are delayed by even a few days during harvest season, whole crops may ruin in the field.

4. The Task Force recommends that the U. S. Department of Labor notify the applicant for temporary workers within seven days of receipt of the application on its completeness and correctness, and if no notification to the contrary is received, the application would be considered as automatically approved.

Rationale

A long-delayed notice that the application is incomplete may result in a late harvest and a potential loss of crops. Unless the U.S. Department of

Labor has the incentive to act on a timely basis, considerable delays could be experienced.

5. The Task Force recommends that the definitions of agriculture and agricultural employment by federal agencies be made compatible with the definitions found in the Fair Labor Standards Act.

Rationale

The multiplicity of definitions of agriculture and agricultural employment creates the cumbersome situation where an applicant for temporary workers may be defined as an agricultural employer under one definition and not under another. The standardization of definitions would clarify who is, and who is not, an agricultural employer.

6. The Task Force recommends that a provision be added to allow an employer, in lieu of being required to provide housing for temporary workers, to furnish a housing allowance.

Rationale

The proximity of many agricultural areas to towns, or to Mexico, makes it more practical and cost-effective to provide a housing allowance instead of housing.

7. The Task Force recommends that the temporary workers program include a monitoring mechanism to ensure that agencies processing such workers are staffed properly to handle the volume of temporary workers that may be sought.

Rationale

Given the anticipation that a significant number of agricultural employers currently depending on undocumented aliens will seek temporary workers in

the future, it is important that those agencies processing such workers be staffed to accommodate an increased demand for temporary workers.

8. The Task Force recommends that a transitional temporary workers program be established for no longer than three years.

Rationale

Due to the significant dependency of agricultural employers on undocumented aliens, a transitional temporary workers program would ease the impact on agriculture of the proposed provision making it unlawful to employ undocumented aliens.

9. The Task Force recommends the establishment of a commission for 18 months to study and recommend a workable labor certification procedure for H-2 and other nonimmigrant worker programs as proposed by the Education and Labor Committees' amendment.

Rationale

Under the current regulatory structure, the U.S. Department of Labor applies a procedure that enables it to determine if there is a need for foreign labor and if the importation of such labor will adversely affect the wages and working conditions of domestic labor. The procedure provides for the filing of applications for temporary foreign agricultural workers in sufficient time to allow for the recruitment of qualified and available domestic labor. Testimony presented to the Task Force on this topic parallels that presented to many congressional committees. The procedure is criticized by representatives of both labor and agricultural interests.

In concordance with the U.S. House of Representatives Committee on Education and Labor, the Task Force believes that the labor certification process needs to be carefully studied so that appropriate changes can be made

to the process. The goal of the changes would be to create a process that ensures that the wages and working of domestic workers are not sacrificed at the expense of imported workers, and simultaneously, that threatened crops are harvested.

10. The Task Force recommends not providing temporary workers the right to file suit in district court for violation of U.S. Department of Labor standards, until administrative remedies have been exhausted.

Rationale

Members of the Task Force felt that in a situation involving violation of U.S. Department of Labor standards regarding nonimmigrant workers, administrative remedies should be exhausted prior to granting such workers the right to file suit in district court. Moreover, the members expressed the opinion that the proposed amendment by the Committee on Education and Labor of the U.S. House of Representatives providing the right to file suit without exhausting administrative remedies would have a significant impact on the already crowded dockets of district courts.

11. The Task Force recommends adding a temporary workers program limited to short terms (up to 4 months) under which workers may move between growers to harvest perishable crops in times of emergency.

Rationale

The members of the Task Force agree with the proposed amendment by the Committee on Agriculture of the U.S. House of Representatives calling for the establishment of a nonimmigrant seasonal agricultural program which allows the entry of temporary workers to harvest perishable crops on an emergency

basis and permits the worker to move from producer to producer. However, the members disagree with the 11 month limitation specified in the amendment. The members believed that an 11 month emergency is unlikely and that a 4 month limitation is more realistic. A concern was expressed that allowing workers to stay up to 11 months may result in some agricultural producers seeking continuous use of temporary workers by claiming consecutive "emergencies", the result being that only one month out of the year would be allocated to domestic workers.

G. LEGALIZATION (AMNESTY)

Similar to the provision to establish employer sanctions in the proposed federal Immigration Reform and Control Act of 1983, the legalization (or "amnesty") provision has stimulated substantial controversy among policymakers and the general public. Although a legalization concept was advanced earlier by some groups, it was not until September of 1975 that it became a central part of the immigration reform debate when, along with an employer sanctions provision, it was incorporated into House Bill 8713. Since that time the concept has been viewed by policymakers and others as a "balance" to employer sanctions. Furthermore, in view of the large number of illegal aliens currently residing in the United States, legislation of some type is a practical necessity.

Most proponents of the legalization provision generally perceive it as the only viable alternative to a massive deportation or "repatriation," similar to what took place in the 1930's and in 1954 under "Operation Wetback." A massive deportation effort would result in the violation of the civil liberties of individuals of Mexican descent, be economically impossible and, in the end, be ineffective.

Those who favor the concept of legalization argue that it is the recognition of -- and practical response to -- the fact that there is a sizeable undocumented population (whose exact size is unknown) which has been in the United States for a number of years, and has established strong family and community ties, and has contributed substantially to the United States economy and society. Moreover, legalization would eliminate the existence of a class of individuals who are "outside" the system and, thus, can be easily

exploited.

Proponents of legalization are not homogenous in their opinions. Some agree with the Senate approved two-tier provision -- one tier consisting of persons granted permanent resident status and the second tier consisting of persons granted temporary resident status. Others disagree with the two tiers because of the limited recognition of an individual's legal rights and the "probationary" nature of the second tier, and instead favor a single tier such as that proposed by the House of Representatives. Under the House version, an individual who entered prior to January 1, 1982 (or whose authorized stay expired prior to January 1, 1982), who resided continuously in the United States since that date, and is not otherwise affected by the 33 grounds of exclusion under current law may be granted permanent resident status by the Attorney General.

Other supporters of the legalization concept, however, are opposed to the language in both versions of the bill because of (1) the difficulty for undocumented individuals to prove "continuous residency," (2) the prospect of splitting-up of families that have one member who has been deported previously and thus is not eligible for legalization, and (3) the fear that the legalization provision may really be intended to identify the undocumented population in order to deport them.

Some opponents to legalization argue that such a provision would be a blanket approval of an illegal activity (unauthorized entry into the United States or violation of a visa). Moreover, it is argued, such an action will not accomplish what immigration reform is supposed to do, which is to lessen the labor market impact of illegals and to improve this nation's economy by creating jobs. In fact, opponents contend that legalization would encourage further unauthorized entry into the United States. Opponents also doubt that

this would be a one-time provision -- it would only establish a precedent for similar appeals for amnesty in the future.

Testimony presented before the Task Force touched on all of the above concerns: an immigration attorney and immigration law professor in Houston, though favoring the concept of legalization, opposed the entire proposed legislation including the legalization proposal; a permanent resident of Indian ancestry in Houston questioned the logic of rewarding an illegal activity; a concerned citizen of Mexican descent in Lubbock opposed the pending legislation with the exception of the legalization and temporary workers provision; a professor in Tyler who had previously worked for INS favored employer sanctions but opposed legalization; a past immigration judge in El Paso favored legalization for families with roots but not for single males; an individual of Mexican descent and the owner of a small business in El Paso expressed his concern with the job displacement of citizens and questioned the need for legalization; an attorney in Brownsville suggested that amnesty would encourage more "illegals"; an organizer of agricultural workers who favored the broad idea of legalization stated in Brownsville that the second tier (temporary resident) would institutionalize inferiority and establish a set of second-class workers; several undocumented workers in Dallas expressed their support of the legalization provision and suggested that the date the bill is signed into law should be used as the cut-off date for eligibility; and a retired INS officer in San Antonio opposed both employer sanctions and legalization.

The majority of those that testified favored some form of legalization based on the recognition that a mass deportation would be impractical and that many undocumented individuals and families have put down roots and have become responsible residents of this country.

On the basis of the testimony presented by the general public and INS officials, the Task Force made several recommendations. The majority of the recommendations focus on the actions that could be taken at the state level if the Congress enacts the legalization provisions. The Task Force was particularly concerned with the impact that a legalization program would have in Texas. The recommendations below aim at addressing this concern.

1. Should employer sanctions be enacted, the Task Force recommends that Congress enact a one-tier legalization program with a reasonable cut-off date.

Rationale

The Task Force believes that the significant number of individuals and their families who entered this country without inspection, yet have established substantial roots and equities in the United States, should be granted permanent legal status. Legalization is a necessary balance to the enactment of employer sanctions. A mass deportation of all those suspected of having entered without inspection is neither practical nor economically feasible. Moreover, the establishment of a temporary resident alien category (a two-tier system) will create a complicated administrative problem. Consequently, the Task Force favors the use of a single demarcation date.

2. The Task Force recommends that a state legalization coordinator be appointed within an Office of Immigration and Refugee Affairs to insure a uniform and smooth legalization program in Texas. (See also Asylum recommendation No. 1).

Rationale

Analogous to the existing position of Refugee Coordinator, the legali-

zation coordinator would establish a direct working relationship with the Immigration and Naturalization Service and local agencies in order to facilitate an effective legalization program.

3. The Task Force recommends that consideration be given to having the present Governor's Task Force on Immigration act as an advisory board on legalization implementation.

Rationale

In order to fully utilize the knowledge, experience, and wide geographical representation of the Task Force members, the Task Force could assume the advisory role to the legalization coordinator. This action would eliminate the need for selection and creation of an additional body.

4. The Task Force recommends that the Governor's Office through an appointed representative, assist and cooperate with the Immigration and Naturalization Service, Dallas Regional Office, in the implementation of a uniform and coordinated legalization program between federal, state, and local public and private agencies throughout the state.

Rationale

In order to guarantee a standardized legalization program in Texas, there must be an office at the state level that coordinates the training of participants and assists in the distribution of guidelines issued by the INS Regional Office in Dallas. The legalization coordinator also could aid or promote actual implementation of the program at the local level. In this way, the legalization program in El Paso would be the same as in Houston, Brownsville, and all other sites.

5. The Task Force recommends that the Governor request a commitment from the Immigration and Naturalization Service Commissioner regarding his verbal offer to accord the Task Force direct input in the writing of the federal regulations on legalization, if the pending federal legislation is enacted.

Rationale

The size and geographical location of Texas, as well as the significant undocumented alien population in the State which may apply for legal status under the legalization program, makes it imperative that Texas participate in the development of regulations concerning legalization. Our involvement in this process will facilitate the inclusion of considerations unique to Texas that otherwise may be overlooked in the writing of the regulations.

6. The Task Force recommends that the enforcement and examination/adjudication personnel of the Immigration and Naturalization Service be fully trained on the legalization policies, regulations, and guidelines, in order to insure that aliens with a possible claim for legalization not be removed from the country during the interim between the date of Congressional approval and the actual effective date of the new law, if it is enacted.

Rationale

The complexity of a legalization program and the myriad of individual circumstances that will surface require that, to effectively and fairly implement the program, eligible aliens not be eliminated from the process by an unreasonable deportation or exclusion. Eligible aliens would lose their eligibility and the benefits accruing from legalization through an unreasonable deportation or exclusion. Efforts should be made to grant eligible

aliens due process in legalization and thus insure the intent of the legalization program.

7. The Task Force recommends that those whose status is legalized and are under 18 years of age, in need of emergency services, or pregnant should be exempt from the prohibition against receiving federal public assistance.

Rationale

The Task Force is in agreement with the recommendation of the Committee on Energy and Commerce of the U.S. House of Representatives that the general welfare of the society is enhanced by providing adequate health care for those persons on whom Congress confers legal residency and who will by virtue of their residence, confer United States citizenship upon their children. To ignore the health care of those on whom Congress provided legal status would be detrimental to the productivity and welfare of the entire society.

H. REIMBURSEMENT

Given the preemptive power of Congress in the field of immigration and national immigration policies, Congress should provide full federal funding for any related costs to state and local governments. More specifically, the State of Texas--because of its geographical size and nearly 2,000-mile long border with the Republic of Mexico--will experience a significant impact on its resources as a result of the proposed immigration reforms. Consequently, Texas and its localities should be protected from unanticipated budget increases.

The Task Force is particularly concerned with the impact of the proposed immigration reforms on general public services. Both proposed bills include prohibitions against newly legal residents receiving any federally-funded public assistance (i.e. cash, medical, social or education services) for a certain number of years. With this prohibition, those needing services will look to state and local assistance. Although the exact number of undocumented aliens who will be granted legal status is unknown, Texas border counties who already are experiencing a difficult economic situation will most likely see an additional strain on their resources. In particular, concern has been expressed by superintendents of border school districts about the potential direct impact on their already limited capabilities. The situation is so severe for some school districts that even a relatively small increase to their student enrollment will severely tax their limited classroom space. These school districts, which have very limited tax bases, find it difficult to build new classrooms and to recruit bilingual teachers who are also needed in urban school systems with larger tax bases. The following recommendations on reimbursements are made by the Task Force:

1. The Task Force recommends that Congress insure that adequate funds are provided to states that will bear a disproportionate burden of immigration reforms on public services such as education, medical care, and others.

Rationale

The geographical size and location of Texas, with its long border with the Republic of Mexico, and its relatively prosperous economy will continue to attract residents from other states, as well as from Mexico. Those unauthorized aliens who achieve legalization may place additional demands on public services that are already strained because of federal funding cuts, an influx of residents from other states, and natural population growth.

2. Specifically, the Task Force recommends that reimbursement to states should include public health assistance costs for aliens who have applied for legalization (e.g., tuberculosis, family planning, and communicable diseases.)

Rationale

The Task Force is in agreement with the proposed amendment by the House Committee on Energy and Commerce regarding the need to make available public health services to individuals who are going through the legalization process. We cannot ignore the health conditions of those on whom Congress may provide legal status. To the extend that newly legalized residents require health services provided by state and local governments, the costs of these services should be reimbursed by the federal government. To ignore these needs would negatively affect the broader health status of the society.

3. The Task Force recommends the adoption of federal educational aid through grants to schools for basic education (up to $300 per pupil), and to high impact districts (those with 500 alien students or 5 percent of pupil population).

Rationale

The members of the Task Force concur with the House Committee on Education and Labor's proposed amendment to assist state education agencies with the potential additional costs of educating eligible legalized aliens.

I. ASYLUM

Although the asylum provision of the proposed federal immigration legislation has not received as much public attention as the employer sanctions and legalization provisions, it, nevertheless, has created controversy. The primary controversy is the conflict between the rights of a nation to limit immigration and to exercise control over its borders and the interest of individuals fleeing political persecution to receive protection in the nation to which they have fled. The issue is further complicated by the existence of mass migrations of individuals whose motives for movement are complex and varied (such as war, oppression, abject poverty, famine, and the threat of death within their home countries). Varying motives make it difficult to evaluate their legal status as "refugees." Further, there is a lack of an international framework governing all asylum situations.

The term "asylum" derives from the Greek and Latin expression meaning "something not subject to seizure" or "freedom from seizure." Even though the term may also be used to refer to a place or territory, its more common reference is to the concept of protection or freedom from seizure. Moreover, asylum can be granted within a nation's territory (territorial asylum) or outside its territory in places such as diplomatic missions, consulate offices, and ships (diplomatic asylum).

The issue of asylum in the United States has become more prominent in recent times due to the persistent flow of Haitian nationals since 1972, the Cuban boatlift of 1980, and the continuous entry of Central American refugees in the early 1980's. All three flows dramatically underscore the lack of

preparation for mass entry emergencies in the United States. As the number of Central American refugees entering Texas has become more evident, Texas residents and policy-makers have also become more concerned with the issue of asylum. What follows are the recommendations that emerged from the public testimony presented and the meetings held by members of the Task Force.

Recommendations

1. It is recommended that an Office of Immigration and Refugee Affairs be established within the Governor's Office with an advisory board (having a composition and geographic representation similar to the Governor's Task Force on Immigration) composed of representatives of local, state, and federal agencies. The Office of Immigration and Refugee Affairs would--to the extent authorized--administer, monitor, and evaluate the implementation of projects and programs concerning issues such as legalization, refugee assistance, employer sanctions, and state documentation. This office would also collect appropriate data and develop policy analyses of immigration and refugee related topics. (See also Employer Sanctions recommendation No. 7 and Legalization recommendation Nos. 2, 3 and 4.)

Rationale

The complexity of immigration and refugee issues necessitates that Texas address these matters in a coordinated and uniform way. Consequently, there should be a permanent office to administer and monitor the implementation of immigration related programs and projects. The consolidation of immigration related efforts into an Office of Immigration and Refugee Affairs would facilitate the smooth administration of such programs. In addition, this

office could make an important contribution to the understanding of policy issue by collecting and analyzing available data so that the state's policy makers would have a firmer base upon which to make the necessary decisions.

The work and mission of the proposed Office of Immigration and Refugee Affairs would be greatly facilitated by the concurrent establishment of an advisory board that would work closely with the staff in the development and implementation of immigration programs and projects. The advisory board could simultaneously provide important support for the decisions made and could facilitate the broader acceptance of the decisions and programs adopted or piloted. In addition, the advisory board, which would have a composition and geographic representation similar to the Governor's Task Force on Immigration, would assist in developing and maintaining the necessary communication and liaison between local, state, and federal governmental units and ensuring a concerted action.

Recent history has shown that coastal or border states can be suddenly impacted by international events or circumstances which results in federal governments sanctioning of large-scale refugee inflows. Also, the Texas economy is continuing to expand and the lure of jobs in Texas is particularly attractive. The combination of these circumstances is readily apparent, particularly with respect to Central American refugees.

The extent and nature of the political and military conflict in Central America will most likely result in a continued large number of Central American refugees entering Texas. In 1983, the U.S. Border Patrol reported apprehending and initiating exclusion/deportation procedures for a sizable number of Central American refugees discovered in several counties in Texas. In proportion to

non-Central American detainees, the number of Central American refugees apprehended has increased at a greater rate. Although the total number of Central American refugees that will enter the United States may not be as large as previously predicted, due principally to Mexico's increased efforts at apprehending and intercepting Central American refugees in Mexico prior to their arrival in the United States, the number of refugees seeking entry will nonetheless be significant.

In order to avert some of the problems associated with a mass refugee situation, Texas should demonstrate its foresight by developing a contingency plan to deal with a possible large influx of refugees in the future. The development of such a plan should include the investigation of what other states, Florida in particular, have done concerning this issue. Florida is noted because of its unique experience of having undergone three mass immigrations of refugees in the last twenty-five years (two involving Cuban refugees and the third involving Haitian refugees.) In order to gather some facts and have direct contact with officials and others involved with refugee affairs in Florida, a committee of the advisory board should visit Florida and gather facts for developing a plan to deal with the possibility of mass refugee problems in Texas.

2. It is recommended that the U.S. Department of State develop a fair and expeditious asylum-granting process with specific guidelines, and that if a fair asylum system can not be developed to adjudicate asylum applicants in an expeditious manner, then the applicant should be given the proper authorization to obtain a social security card and should be allowed to work.

Rationale

At several of the public hearings held by the Governor's Task Force on Immigration, the members of the Task Force were told that refugees seeking asylum who were granted release on bond were sometimes restricted from seeking employment while awaiting notification of a date for appearance at an exclusion/deportation hearing. The rationale for the INS action is to discourage refugees from remaining in the United States by creating a disincentive to seek and locate employment. The intended result would be their voluntary departure. Although technically the 'no-work rider' does not prohibit a person from working, what it does prevent is the obtaining of a Social Security card which in turn would facilitate the person securing employment.

It appears that the economic situation of most refugees seeking asylum is so poor that regardless of the placing of a no-work condition on the bond, upon release, refugees will seek employment in order to survive and to pay back the money that was likely borrowed for the bond. Most refugees cannot survive on the money they have with them while waiting the 6 months to a year, or longer, for a decision on their asylum application. Given also the fact that it is not illegal to hire an undocumented individual (except for agricultural labor contractors), unscrupulous employers can take advantage of asylum applicants and exploit their labor in order to have an unfair advantage over their competitors. Moreover, the policy seems to penalize the asylum applicant for the fact that the federal government cannot expeditiously adjudicate asylum cases through no fault of the applicant. If asylum applications could be adjudicated expeditiously there would most likely be little concern with placing no-work conditions on bonds, since the asylum applicant's stay would be brief.

The burden of improving the asylum-granting process should be on the federal government and consequently an asylum applicant should not be penalized for the fact that an asylum case cannot be expeditiously adjudicated and carried out in a fair manner.

The federal government's asylum granting system is plagued with the dual problem of a backlog of over 130,000 asylum applications and long delays in the processing of asylum applications. Much of the problem can be attributed to the division of responsibility and authority between the U.S. Department of Justice and the U.S. Department of State. Under the existing arrangement the Department of Justice, specifically the Immigration and Naturalization Service, is responsible for the detection, apprehension, detention, and adjudication of refugees who have entered the United States territory without inspection and who have requested asylum. The State Department, on the other hand, is responsible for making a recommendation whether or not to grant asylum and then communicating this recommendation to the Department of Justice which in turn makes the final decision. In the interim between the time INS informs the Department of State of an individual who is seeking asylum, and the time INS receives the recommendation by the State Department on the particular case (which can be quite lengthy), INS has only two choices: (1) continue to house and feed the individual in a detention facility or in a municipal or county jail, or (2) release the person on bond. The first action increases the cost to the U.S. Government and, in particular, it further strains the limited INS budget. The second action does not create an immediate cost to the U.S. Government. However, because of the long delay in receiving the State Department recommendation and the practice of granting release on bond without specifying a date for appearance, the adjudication process is made very difficult. This is further complicated in cases where the asylum applicant, for a variety of reasons, moves out of the area where the bond was granted.

A second and related problem is the absence of a set of guidelines or standards for the granting of asylum. The asylum-granting process would be considerably more efficient and expeditious if there were clear criteria for the granting or denying of asylum. The guidelines would specify the factors and circumstances under which a person would be given or denied asylum.

3. It is recommended that a uniform and standardized bond-setting system be developed by the U.S. Department of Justice in order to insure that a person with limited economic means is eligible to be released on bond. The purpose of a bond should be only to insure the appearance of the asylum applicant at the exclusion/deportation hearing.

Rationale

The members of the Task Force were made aware during more than one of the public hearings held that there exists a wide discrepancy in the setting of the monetary level of bonds for refugees seeking asylum. In some parts of the state, the monetary level was set at a relatively high level, whereas in other districts for persons in almost identical circumstances, the monetary level of the bond was considerably less. Such a wide discrepancy suggests that the bond level may reflect more the subjective perception or belief of the immigration judge than the individual merits of the application. Given the different levels of economic means, the sizeable backlog of asylum cases, and that the purpose of the bond is to insure the appearance of the applicant at a hearing, a high bond does not seem to accomplish the objective of securing the appearance of an individual at his/her hearing. This is particularly true when the bond document is granted without a specific date for a hearing. The absence of an individual at the exclusion/deportation hearing, when eventually scheduled, may reflect more the need to establish a speedy hearing than the unwillingness of the asylum applicant to attend.

In summary, it appears that there is a clear need to establish a uniform set of standards for the setting of the bond levels. Such a standard would be consistent with the concept of a fair and expeditious asylum-granting process. Most importantly, the issuance of a bond should not be used as a tool to exclude one nationality or one particular ethnic group.

APPENDIX I

THE STATE OF TEXAS
EXECUTIVE DEPARTMENT
OFFICE OF THE GOVERNOR
AUSTIN, TEXAS

March 24, 1983

EXECUTIVE ORDER
MW-3

ESTABLISHING THE GOVERNOR'S TASK FORCE ON IMMIGRATION.

WHEREAS, the Congress of the United States is currently considering legislation that will have a substantial impact on immigration laws; and

WHEREAS, the State of Texas, due to its geographic location and the makeup of its population, has a particular interest in this legislation; and

WHEREAS, there is a need to present the concerns of the State in the positive context of realities and practicalities to Congress prior to the passage of any such legislation;

NOW, THEREFORE, I, Mark White, Governor of Texas, under the authority vested in me do hereby create and establish the Governor's Task Force on Immigration, hereinafter referred to as TASK FORCE.

The TASK FORCE will consist of not more than twenty-eight members appointed by the Governor who shall serve at the pleasure of the Governor until December 31, 1983. The Governor shall designate a Chair and Vice-Chairs from the membership who shall serve in those positions at the pleasure of the Governor.

The TASK FORCE is charged with the following responsibilities:

(a) To examine the impact on Texas and its citizens of the legislative issues, including employer sanctions, amnesty for certain aliens, a seasonal workers' program, and border enforcement;

(b) To hold public hearings in at least four geographic regions of the state in order to insure the greatest input from citizens, business, industry, labor, ranching and farming;

(c) To develop a Texas position on the legislation for presentation to the Governor; and

(d) To develop strategies for affecting the national legislation.

On or before May 30, 1983, the TASK FORCE shall make a complete written report to the Governor. Additionally, the TASK FORCE shall track the activities of Congress and prepare other reports for the Governor as may be suggested in light of those activities. The TASK FORCE shall prepare a final report to be submitted by October 1, 1983.

The TASK FORCE shall meet regularly at the call of the Chair. A majority of the membership shall constitute a quorum. The Chair shall, in consultation with the Governor, establish the agenda for the TASK FORCE meetings.

Members of the TASK FORCE shall serve without compensation but shall be reimbursed for travel expenses at the prevailing state travel allowance.

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The Governor's Office of Planning and Intergovernmental Relations shall serve as staff for the TASK FORCE. All agencies of state and local governments are hereby directed to cooperate with and assist the TASK FORCE in the performance of its duties.

This executive order shall be effective immediately and shall remain in full force and effect until modified, amended, or rescinded by me.

Given under my hand this 24th day of March, 1983.

MARK WHITE, Governor of Texas

ATTEST:

John W. Fainter, Jr.
Secretary of State

FILED IN THE OFFICE OF
SECRETARY OF STATE

MAR 25 1983

RECEIVED by
Appointments, Commission and
Executive Clemency Section

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